

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	RONALD L. BOGGS et al.	)
		) Group Art Unit:
Serial No.:	10/825,506	) 4177
		) Examiner:
Filed:	April 15, 2004	) Mahmoudzadeh
		)
For:	REAL-TIME MONITORING, ANALYSIS, AND	)
	FORECASTING OF TRUNK GROUP USAGE	)

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Commissioner for Patents  
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**REQUEST FOR PRE-APPEAL BRIEF CONFERENCE**

In response to the Final Office Action mailed January 25, 2008, and in conjunction with the concurrently filed Notice of Appeal, Applicants request a pre-Appeal conference in view of the following remarks.

## REMARKS

In response to the Office Action dated January 25, 2008, Applicants respectfully request reconsideration based on the following remarks. Applicants respectfully submit that the claims as presented are in condition for allowance.

Claims 11 and 13-20 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claim 11 was rejected under 35 U.S.C. § 112, second paragraph. Applicants believe these rejections can be addressed routinely if the prior art rejection is withdrawn.

Claims 1, 3, 6, 8-11, 13, 16 and 18-20 were rejected under 35 U.S.C. § 102(b) as being unpatentable over Kline. This rejection is traversed for the following reasons.

Claim 1 recites “analyzing the traffic usage data by computing averages of traffic usage data over a period of time; and forecasting trunk circuit capacity requirements based at least in part on the averages; wherein the averages are computed for a cluster of switches that is a community of interest with a locality of communication access pattern such that there is less communications traffic across a boundary between the cluster of switches and other switches not in the cluster than communications traffic between switches in the cluster.”

Support for this feature is found on at least paragraph [0049] of Applicants’ specification. As described, this grouping of switches in clusters allows for more efficient forecasting. The cluster of switches is defined by communication traffic inter-cluster versus intra-cluster.

Kline fails to teach these features. Kline teaches collecting average usage information for trunk groups (column 2, lines 6-22), but fails to teach grouping switches into clusters for the purposes of computing averages for the cluster. The Examiner cites to Figure 10 of Kline and states that “it is inherent that if cluster of switches are connected to each other Fig. 10.” Figure 10 of Kline illustrates a network map displayed at a network control center. As described in column 9, lines 18-47, the NCC can monitor status of trunk groups between nodes. The Examiner’s position is that each node “inherently” includes a cluster of switches as defined in claim 1. Applicants respectfully disagree.

The legal requirements for inherency are set forth in MPEP § 2112. This section states “[t]he fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *In re Rijckaert*, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) (reversed rejection because inherency was based on what would result due to optimization of conditions, not what was necessarily present in the prior art); *In re Oelrich*, 666 F.2d 578, 581-82, 212 USPQ 323, 326 (CCPA 1981). ‘To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.’” In the present case, it is not inherent in Kline to have a cluster of switches at each node in, for example, Figure 10. This is not an inherent property that must be present, but rather a design consideration that may be altered. Thus, the Examiner’s reliance on inherency is improper.

Further, the term “cluster” in claim 1 is described as “a cluster of switches that is a community of interest with a locality of communication access pattern such that there is less communications traffic across a boundary between the cluster of switches and other switches not in the cluster than communications traffic between switches in the cluster.” Cluster does not simply mean “plural.” Apparently, the Examiner is using the interpretation that cluster means more than one, when this is clearly not the case based on the language of claim 1.

Further, assuming *arugendo*, that Kline somehow does teach clusters of switches at each node of Figure 10, Kline does not monitor traffic within the cluster. Claim 1 clearly states that “averages are computed for a cluster of switches.” Kline teaches computing traffic data between the nodes of Figure 10, not **within** the nodes. Thus, Kline certainly cannot anticipate claim 1.

Lastly, it is noted that the rejection is under 35 U.S.C. § 102, meaning that all the claim elements must be present in the reference for the rejection to be proper. In view of the above remarks, it is clear that Kline fails to teach the elements of claim 1 and that the Examiner’s reliance on inherency is misplaced. Thus, the rejection is improper.

For at least the above reasons, claim 1 is patentable over Kline. Claims 3, 6, and 8-10 variously depend from claim 1 and are patentable over Kline for at least the reasons advanced with reference to claim 1. Claim 11, as amended, recites features similar to those discussed above with reference to claim 1 and is patentable over Kline for at least the reasons advanced with reference to claim 1. Claims 13, 16 and 18-20 depend from claim 11 and are considered patentable for at least the same reasons.

Claims 4 and 14 were rejected under 35 U.S.C. § 103 as being unpatentable over Kline in view of Fitzgerald. This rejection is traversed for the following reasons.

Fitzgerald was relied upon for disclosing measuring traffic as a base unit of bandwidth, but fails to cure the deficiencies of Kline discussed above with reference to claims 1 and 11. Claims 4 and 14 depend from claims 1 and 11, respectively, and are patentable over Kline in view of Fitzgerald for at least the reasons advanced with reference to claims 1 and 11.

Claims 5 and 15 were rejected under 35 U.S.C. § 103 as being unpatentable over Kline in view of Erlang. This rejection is traversed for the following reasons.

Erlang was relied upon for disclosing a metric that is based on a count of a plurality of connections multiplied by a duration of each connection, but fails to cure the deficiencies of Kline discussed above with reference to claims 1 and 11. Claims 5 and 15 depend from claims 1 and 11, respectively, and are patentable over Kline in view of Erlang for at least the reasons advanced with reference to claims 1 and 11.

Claims 7 and 17 were rejected under 35 U.S.C. § 103 as being unpatentable over Kline. This rejection is traversed for the following reasons.

The Examiner relied on “design choice” in finding that it would have been obvious to compute a plurality of forecasts using a plurality of models. This analysis of Kline fails to cure the deficiencies of Kline discussed above with reference to claims 1 and 11. Claims 7 and 17 depend from claims 1 and 11, respectively, and are patentable over Kline for at least the reasons advanced with reference to claims 1 and 11.

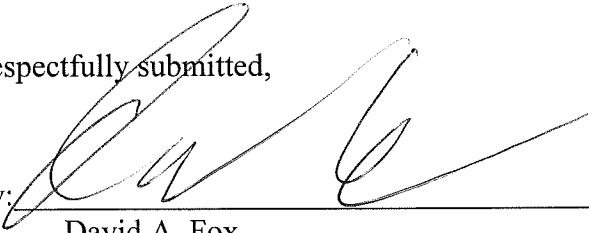
In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Accordingly, it is respectfully requested that this application be

allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

In the event the Commissioner of Patents and Trademarks deems additional fees to be due in connection with this application, Applicants' attorney hereby authorizes that such fee be charged to Deposit Account No. 06-1130.

Respectfully submitted,

By:



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